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TOP TEN IEP MISTAKES: AND HOW TO FIX THEM

2017

Brandon K. Wright



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MISTAKE #1: PRESENT LEVELS THAT AREN'T REALLY PRESENT LEVELS

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#1 Present Levels

2016

Each IEP must contain: "A statement of the child's present levels of academic achievement and functional performance, including--

- (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- 34 CFR 300.320 (a)(1).



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#1 Present Levels

2016

If the statement does not consider the unique needs of the child, establish a baseline for establishing goals and monitoring progress, or allow informed parental participation in the IEP process, then the IEP may be found to deny FAPE.



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#1 Present Levels

2016

Bad PLOP Example: Aiden is a 3rd grader who has difficulty with reading, written language and math.

Better PLOP Example: Aiden is a 3rd grader with reading and math skills at 1st grade level. In written language, Aiden spells at an early 1st grade level. He knows that sentences begin with a capital letter and end with a period, but he has no other consistent understanding of capitalization or punctuation. He is unable to write a complete simple sentence."



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#1 Present Levels

2016

Bad PLOP Example: Katie is below grade level in written expression.

Better PLOP Example: Katie has strength in expressing her views on issues and is impressive with her ability to active questioning of subject expectations in the classroom. She has good research skills and is able to print presented materials which represent some of her strengths. Katie earned a composite score in the "below average" in the 10th percentile range on spelling and written fluency. Katie is not able to compose complete sentences and scored in the 10th percentile range on convention tasks such as punctuation and editing skills.



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#1 Present Levels

2016

Bad PLOP Example: Olivia dislikes school and teachers. She often violates school rules. She becomes angry easily and refuses to obey authorities or take responsibility for her actions.

Good PLOP Example: Olivia does not initiate conversation with adults in the school setting, and only responds to adult communication when the adult confirms Olivia's attention and eye contact. In unstructured or loosely structured settings, Olivia's activity level increases and she is more likely to violate school rules, or become agitated or angry. She has been given 8 disciplinary notices in the past 10 days and 27 since school started 3 months ago. All of these situations occurred during transition times or when the teacher was not in the classroom. When angry, she doesn't know how to de-escalate and has not been willing to discuss the situation after it is over.



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#1 Present Levels

2016

- Present levels must be current.
- Present levels must be specific enough to pass the "stranger test".
- Present levels should include both quantitative and qualitative descriptions of the student's performance, as well as be tied to the most recent evaluation.
- Present levels must be linked to the objectives/benchmarks.



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MISTAKE #2: REPEATING THE SAME GOAL FROM YEAR TO YEAR

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#2 Repeating Goals

2017

- Each IEP developed for a child with a disability must include:
- A statement of measurable annual goals, including academic and functional goals designed to:
 - Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.
 - Meet each of the child's other educational needs that result from the child's disability.
 - For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives.
- 34 CFR 300.320 (a)(2).

#2 Repeating Goals

2017

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DATA COLLECTION AND GOALS



Measurability = observability

#2 Repeating Goals

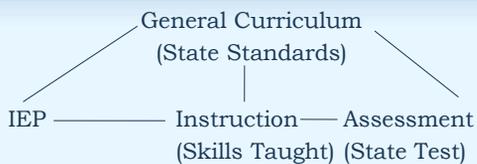
2016

- Damarcus S. v. District of Columbia, 67 IDELR 239 (D. D.C. 2016).*** Districts must revise an IEP to address a student's lack of expected progress. Therefore, if the IEP team is repeating the same goals to IEPs year after year, alarm bells should go off. Here, the student's IEPs repeated goals and objectives word-for-word across multiple years. The IEP team should have addressed the student's lack of improvement by adding services or otherwise amending the IEPs to address the student's specific weaknesses rather than taking no action based on the assumption the student simply had "plateaued."



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When IEPs Promote Alignment to Standards



Aligning IEPs to the Common Core State Standards for Students with Moderated and Severe Disabilities. (2011)
 Courtrade and Browder. Verona, WI. Attainment Company, Inc.

Guidelines for Writing Standard-Based Goals

1. Become familiar with state standards
2. Become familiar with the state's approach to extending standards – Essential Elements/DLM
3. Keep the planning student focused
4. Consider both specific academic goals and broad access goals
 - ▣ In meeting, have general ed teacher discuss highlights of the curriculum for that grade level for each content area.
 - ▣ Don't try to have the team recreate this entire curriculum on the IEP, but instead focus on priorities and access to the broader curriculum

Guidelines for Writing Standard-Based Goals

5. Ask the question, "Is it really academic?"

Final goals should have clear links to academic content.

Example: 7th grade Reading Standards for Literature – Determine a theme or central idea of a text and analyze its development over the course of the text; provide an objective summary

 - 1) Zach will use his AAC to greet peers in English – NOT ELA
 - 2) Zach will acquire 20 sight words that relate to activities in the community – ELA, but not aligned
 - 3) Zach will select two major themes using pictures with phrases after hearing a text summary read aloud – ELA and Aligned

Guidelines for Writing Standard-Based Goals

6. Do not "force fit" all IEP goals and objectives into alignment with academic standards.
 - IEPs for students with moderate and severe disabilities may have some goals that do not align to state standards.
 - Don't back map skills and try to link to NILS (e.g., toileting is a legitimate goal but doesn't link!)

General Considerations for Goals

- A goal should be written for what the team expects the student to achieve within a year, so that the same goals is not repeated year to year.
- A student's failure to make measurable progress towards goals, and the team's repeating IEP goals that the student has still not mastered, can be evidence that the district's IEP is flawed.
- Goals should be expressed in objective terms so that the team can make an analysis of whether the child was making progress.
- **An IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student's progress, and determine the student's progress was satisfactory.**



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MISTAKE #3: "WE WOULD DO THAT ANYWAY."

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#3 "We would do that anyway."

2017

The IDEA requires each IEP to include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child --

- To advance appropriately toward attaining the annual goals;
- To be involved in and make progress in the general education curriculum in accordance with this section, and to participate in extracurricular and other nonacademic activities; and
- To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

34 CFR 300.320 (a)(4).

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#3 “We would do that anyway.”

2017

- An IEP is not defective merely because it fails to include special education services requested by the parents if those services are not necessary for the child to receive FAPE.
- Districts generally cannot successfully defend an IEP on the basis that it contemplates the possibility of future amendments. Instead, courts focus solely on the services identified in the written document presented to the parent.



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MISTAKE #4: PROGRESS MONITORING WITHOUT DATA

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#4 Progress Monitoring

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The IDEA requires the provision of written information to parents about students' progress toward IEP goals and objectives and establishes the parental right to receive reports about their child's progress in special education. 34 CFR 300.320 (a)(3).

Among the required disclosures that must be contained in the IEP is a description of when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 34 CFR 300.320 (a)(3)(ii).



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#4 Progress Monitoring

2017

When Holly's parents received notice of quarterly progress from her teacher, they were especially concerned with her social skills goal, as they had seen an increase in disciplinary reports this quarter sent home. The progress report simply stated that Holly was "making progress" toward that goal.

Holly's parents email the teacher asking for the evidence that Holly was making progress toward that goal. What should Holly's teacher send them?



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#4 Progress Monitoring

2017

Educational Benefit/Evidence of Progress?

- Did the student meet each of his or her IEP goals? If not, was there progress?
- What is the evidence supplied for progress on each IEP goal? Data collected?
- Do we have "apples-to-apples" data to compare from year to year?
- Did the student make progress in the general curriculum? Pass classes? Advance to the next grade? Standardized tests?
- How about social performance? Behavior? Functional skills?
- If no progress on a goal, what accounts for it?
 - Methodology issues?
 - Attendance?
 - Wrong goal?



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MISTAKE #5: ESY DISCUSSIONS WITHOUT DATA

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#5 Extended School Year

2017

ESY should provide for the maintenance of acquired skills and knowledge not the acquisition or continued development of new skills. For that reason, the amount of services provided for ESY purposes are usually less than that provided during the regular school term where the child is expected to make "progress."

Recoupment is the amount of time required to recoup those lost skills when school/instruction resumes. It is typical for students, those with and without disabilities, to spend time at the beginning of each school year for review and re-teaching of previously learned skills. Long standing guidance from the Illinois State Board of Education suggests that "review and re-teaching should not extend beyond the *first thirty school days of the school year.*"



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Definition of ESY

Extended school year ("ESY") services means special education and related services that are provided to a child with a disability:

- beyond the school district's regular school year
- in accordance with the child's IEP
- at no cost to the parent/guardian of the child, and
- that meet any additional state standards

ESY Requirements

- ESY services must be provided only if the student's IEP determines, on an individual basis, that services are necessary to provide the student a free appropriate public education (FAPE)
34 CFR § 300.016(a)(2)
- A school district may not limit ESY services to particular categories of disability
- A school district may not limit the type, amount, or duration of ESY services.
34 CFR § 300.106 (a)(3)

ESY Factors

Information to Gather Before IEP Meeting:

- Progress on IEP goals in consecutive IEPs
- Progress reports (including data collected) by teachers and related service providers who have had direct contact with the student before and after breaks in instruction

- Observations and input from teachers, parents, and others, and
- Results of criterion-referenced tests, assessments, and other equivalent measures of student achievement

Communication on Extended School Year Services for Students with Disabilities. (November 2001) ISBE.

Addressing ESY in the IEP Meeting

Regression-Recoupment

Was student progress limited due to loss of acquired knowledge or skills during any breaks in instruction?

Was student progress limited due to inability to recoup acquired knowledge or skills within a reasonable time through review, teaching, and related service delivery?

Other Factors

Does the nature or severity of the student's disability or the student's skill level necessitate ESY services?

Are ESY services generally considered an integral part of programming for student's with this disability?

#5 Extended School Year

2017

Data Collection Prior to IEP Meeting

- Know who should record – Each of the child's service providers should collect data for the goals they are working on.
- Know what to record. Data may include academic, social, emotional, behavioral, or functional data.
- Don't wait to document. Start documentation during the first few weeks of classes.
- Start by collecting data before and after school breaks.
- Note drops in child's performance on goals after breaks, including regular weekends, long weekends, Thanksgiving break, winter break, spring break, and summer break.
- Raw data sheets as opposed to just end-of-quarter or end-of-marking period, can be useful.
- Maintain data collection efforts. While information about a student's performance after school breaks is important, teams should also consider how the student performed throughout the year.



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MISTAKE #6: UNDERESTIMATING THE BEHAVIOR INTERVENTION PLAN

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#6 Behavioral Intervention Plans

2014

1. A P-BIP must be developed when a student's behavior interferes with learning.
2. A P-BIP must be based on recent and meaningful assessment data.
3. A P-BIP must be individualized to meet the student's unique needs.
4. A P-BIP must include positive behavior strategies and supports.
5. A P-BIP must be implemented as planned and its effects monitored.

#6 Behavioral Intervention Plans

2014

"Schools that use office referrals, out-of-school suspension, and expulsion – without a comprehensive system that teaches positive and expected behaviors and rewards the same – are shown to actually have higher rates of problem behavior and academic failure." - RTI and Behavior: A Guide to Integrating Behavioral and Academic Supports, LRP 2008.

Old School -vs- New School:

- Behavior Management -vs- Behavior Intervention
- Focus on "consequences" -vs- Focus on "antecedents"
 - i.e., understanding "why" – What is the function of the behavior?
- Problem behavior needs to be controlled. -vs- Positive behavior needs to be taught.

#6 Behavioral Intervention Plans

2014

1. The function of the behavior
2. The context/environment related to the behavior
3. Removing the student's need for the problem behavior and teaching an acceptable functionally equivalent replacement behavior
4. Reinforcing the new behavior so it can be maintained long term
5. Strategies for school personnel to handle the problem behavior if it occurs again
6. Communication plans for necessary individuals (implementers, parents, etc.) – including data collection and collaboration



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Legal Update

2014

- ***T.K. and S.K. v. New York City Department of Education (E.D. NY 2014)***
- **The court held that the district's failure to address peer harassment in the student's IEP or BIP amounted to a denial of FAPE. The Court explained that a district denies FAPE when it is deliberately indifferent or fails to take reasonable steps to prevent bullying that substantially restricts the educational opportunities of a child with a disability.**



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Legal Update

2016

- ***M.S. v. Lake Elsinore Unified School District, (C.D. Cal. 2015)***. **The data that a one-to-one aide collected while observing a student with autism in her special education classroom did not shield a California district from claims that it failed to evaluate the student's maladaptive behaviors. The court noted that aide, who was seeking her board certification in behavioral analysis, did not appear to be qualified to conduct an FBA. The district also denied FAPE by conducting the IEP meeting without the parent.**



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The Framework for Success

2015

A parent who feels

**HEARD
RESPECTED
VALUED**

is substantially less likely to turn a disagreement over an IEP decision into costly litigation.



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**MISTAKE #8:
MAKING PLACEMENT
DECISIONS BEFORE
FINALIZING GOALS**

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Making the Placement Decision

2016

- **Rule 1: Never Predetermine placement!**
- **Rule 2: Don't have placement pages fully completed ahead of time!**
- **Rule 3: Don't base your placement decisions on the school schedule!**
- **Rule 4: Goals first, then accommodations, then placement.**



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Making the Placement Decision

2016

Least Restrictive Environment (LRE):

Each public agency must ensure that —

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. §300.114(a)(2).



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Making the Placement Decision

2016

Consider all goals and objectives when determining the services that the student will need to make progress toward those goals and objectives. There must be a link between everything else in the IEP and the decisions made for services and placement. Thus, the services and placement should be based on student needs, data, goals, etc. and not on school schedules, teacher or parent preferences, personnel availability, etc.



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Making the Placement Decision

2016

- Consider whether needs can be met by use of supplementary aids and accommodations or if services will be needed
- Discuss what services are needed (Direct/Indirect; Individual/Group)
- Discuss if services can be provided in the general education environment (Co-teaching; Other inclusive practices)
- If student needs cannot be satisfactorily met in the general education environment, discuss the reasons why the student requires special education classes or separate schooling



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Making the Placement Decision

2016

- Discuss how much time services will be needed for the student to obtain educational benefit
- Thoroughly discuss placement options, including pros and cons of each placement. Document discussion, including potential "harmful effect" of the placement selected
- Think in terms of the continuum of placement options. Keep in mind that home/hospital instruction is more restrictive than separate facilities (public or private day schools, residential



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Making the Placement Decision

2016

Remember to include clear documentation of the placement discussion in the notes:

The IEP document must inform the parents WHY the placement decision was made, not just that it was made.



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Making the Placement Decision

2016

Placement decisions must be based on the individual needs of the child, as determined by the child's IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. 71 Fed. Reg. 46,588 (2006).



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Legal Update

2016

- *D.N. and J.V.N. v. Board of Education of Center Moriches Union Free School District*, 66 IDELR 163 (E.D. NY 2015). **Noting that a 10-year-old boy with autism needed to interact with other children to make progress on his socialization goals, the District Court held that the district's proposed 1:1+1 program was inappropriate.**



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Road Map to FAPE





**MISTAKE #9:
FAILING TO HAVE THE
RIGHT PEOPLE AT THE
TABLE**

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Required IEP Participants

2016

1. The parents of the child
2. Not less than one general education teacher of the child (if the child is or may be participating in the general education environment)
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child
4. A district representative



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Required IEP Participants

2016

5. An individual who can interpret the instructional implications of evaluation results.
6. At the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related service personnel as appropriate
7. Whenever appropriate, the child



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General Educator's Role

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Every single educator in the school has a responsibility to either (or both) fulfill their role as a member of a student's IEP team or to fulfill their role as an implementer of an IEP (including the general education curriculum, making modification, providing accommodations, or managing behavior plans).

Every. Single. Educator.



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Meeting Participants

2016

- *Charlotte County Sch. Dist.*, 114 LRP 22660 (SEA FL 10/18/13). The notice for a Florida student's IEP team meeting listed the individuals who would attend, including general education teachers. As the meeting began, the facilitator told the parents that the general education teachers would provide input and then leave. The special education reading teacher would remain through the end of the meeting to participate in discussing annual goals, the facilitator stated. According to the district, each teacher discussed the student's progress, accommodations, and course needs. When the parents indicated that they had no further questions for the general education teachers, the district excused the teachers. As the district later explained, and as the recording of the meeting confirmed, "the parents never once objected to any of the teachers leaving."



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Meeting Participants

2016

- *Charlotte County Sch. Dist.*, 114 LRP 22660 (SEA FL 10/18/13).

- **How did the hearing officer decide???**



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Meeting Participants

2016

- A required IEP team member may be excused from an IEP meeting, **in whole or in part**, when the meeting involves modifying or discussing the member's area of the curriculum or related services if: 1) the parent and district consent to the excusal in writing; and 2) the member submits written input prior the meeting. 34 C.F.R. §300.321(e)(2).



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Meeting Participants

2015

- **West-Linn Wilsonville School District v. Student, (D. Ore. 2014).**
- The court held that the absence of a regular education teacher (in this case, the music teacher was invited and excused) was a denial of FAPE even though the parent signed the excusal because the teacher did not provide the required written input as a required member. The absence of the regular education teacher along with the lack of written input prevented the parents from meaningfully participating.



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Consensus

2015

Facilitator should adhere to these criteria for consensus:

- *Each person agrees they have been heard*
- *Group members support the decision even if it is not their first choice*
- *Everyone is committed and will support the decision as if it were their first choice*



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MISTAKE #10: MAKING RECOMMENDATIONS WITHOUT FINALITY

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#10 Making a Decision

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Is it a **decision**, or is it a **recommendation**?



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#10 Making a Decision

2017

Knable v. Bexley City Sch. Dist., (6th Cir. 2001). Although the district met with the parents on several occasions to review possible placement options for the student, such meetings were not the “equivalent of providing the parents a meaningful role in the process of formulating an IEP.” Because the district did not formally offer an IEP/placement prior to placement in a residential program by the parents, parents are entitled to reimbursement. The parents’ refusal to agree with the district’s placement recommendations did not excuse the district’s failure to conduct an IEP conference.



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Non-Consensus Issues

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When Consensus Is Not Achieved

- When the Team fails to come to consensus, the school is supposed to take the action that it deems appropriate; parents have the opportunity and the burden of challenging that action.
- There are only two parties at the meeting. When there is a “tie” the school’s position prevails, subject to parent challenge.



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#10 Making a Decision

2017

All services delineated in an IEP should be set forth in a fashion that is specific enough for parents to have a clear understanding of the level of commitment of services on the part of the school system. This will help to avoid misunderstandings and ensure meaningful participation in the educational decision-making process.



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QUESTIONS AND ANSWERS

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Thank you!

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